it cannot survive its principal. *Borst* v. *Corey*, 15 N. Y. 505; *Waddell* v. *Carlock*, 41 Ark. 523. Where the seller retains title his security outlives the debt. *Evans* v. *Johnson*, 39 W. Va. 299, 19 S. E. 623; *Phillips* v. *Adams*, 78 Ala. 225. And where he conveys, expressly reserving a lien in the deed, courts have held likewise, regarding the transaction as an informal mortgage. *Hull's Admr.* v. *Hull's Heirs*, 35 W. Va. 155, 13 S. E. 49; *Coles* v. *Withers*, 33 Grat. (Va.) 186. *Contra*, *Chase* v. *Cartright*, 53 Ark. 358, 14 S. W. 90. But since equity has discretion in limiting equitable rights, it seems proper in the case of an implied lien, which is so closely connected with the legal debt, to apply the analogy of the legal Statute of Limitations, and the weight of authority supports this view. See 2 JONES, LIENS, § 1099; 2 WARVELLE, VENDORS, 2 ed., § 709. But see WOOD, LIMITATIONS, 3 ed., § 232.

WATERS AND WATERCOURSES — APPROPRIATION AND PRESCRIPTION — REASONABLENESS OF METHOD OF APPROPRIATION. — The plaintiff appropriated a certain portion of the flow of a river by means of a water-wheel. A subsequent appropriator built a dam which so backed up the water that there was no longer current enough to run the water-wheel. *Held*, that the plaintiff cannot recover. *Schodde* v. *Twin Falls Land and Water Co.*, U. S. Sup. Ct., Apr. 1, 1912.

By decision and by constitutional provision water-rights in Idaho must be determined by the doctrine of prior appropriation. *Drake* v. *Earhart*, 2 Idaho 750, 23 Pac. 541; IDAHO CONST., Art. 15, § 3. By this doctrine the right of the first appropriator for a beneficial use is unquestionable. *Coffin* v. *Left Hand Ditch Co.*, 6 Colo. 443; *Morris* v. *Bean*, 146 Fed. 423. The method of appropriation must be a reasonably economical one. *Barnes* v. *Sabron*, 10 Nev. 217; *Court House, etc. Co.* v. *Willard*, 75 Neb. 408, 106 N. W. 463. Yet methods ordinarily used are upheld as reasonable, even though wasteful. *Barrows* v. *Fox*, 98 Cal. 63, 32 Pac. 811; *Rodgers* v. *Pitt*, 129 Fed. 932. The principal case involves the question whether a method is unreasonable merely because it necessitates preserving the present height of the water. Previous authority would seem, on the whole, to negative this proposition. *Cf. Cascade Town Co.* v. *Empire Water and Power Co.*, 181 Fed. 1011. See *Proctor* v. *Jennings*, 6 Nev. 83, 90. But *cf. Natoma Water and Mining Co.* v. *Hancock*, 101 Cal. 42, 35 Pac. 334. Later comers ought not to be allowed to force a prior appropriator to use very expensive methods of obtaining water. The use by him of a common method, like a water-wheel, can hardly be regarded as unreasonable. Yet unless it be so regarded, the decision of the principal case seems inconsistent with the appropriation theory.

WATERS AND WATER COURSES — TIDAL WATERS — NATURE OF STATE'S TITLE TO TIDE-FLOWED LANDS. — The state granted to the plaintiff railroad certain tide-flowed lands. *Held*, that the State Land Board should be enjoined from selling the lands to another to construct improvements in aid of navigation thereon, since the state has such an interest as can be passed to a private person. *Corvallis & E. R. Co.* v. *Benson*, 121 Pac. 418 (Or.).

For a discussion of the principles involved, see 18 HARV. L. REV. 341.

WILLS — CONSTRUCTION — CONDITION NOT TO CONTEST WILL. — A will provided that if any beneficiary entered suit to break it he should have five dollars only and his share should be divided among others. The plaintiff, one of the beneficiaries, unsuccessfully contested probate on the ground of forgery. *Held*, that there is no forfeiture. *Rouse* v. *Branch*, 74 S. E. 133 (S. C.).

In England it has been held that no public policy forbids enforcing a condition forfeiting a devise for contesting the testator's competency. *Cooke* v. *Turner*, 15 M. & W. 727. As to personalty, however, a contest based on prob-

able cause will not be allowed to work a forfeiture. *Powell* v. *Morgan*, 2 Vern. 90; *Morris* v. *Burroughs*, 1 Atk. 399. But this applies only when there is no gift over. *Cleaver* v. *Spurling*, 2 P. Wms. 526; *Stevenson* v. *Abington*, 11 Wkly. Rep. 935. In this country, the tendency is to hold the condition valid without distinction between realty or personalty or as to gifts over. *Thompson* v. *Gaut*, 14 Lea (Tenn.) 310; *Matter of Estate of Hite*, 155 Cal. 436, 101 Pac. 443. Accordingly several courts have said that the law puts no restriction on a testator's right to make his bounty conditional upon abstention from litigation. *Donegan* v. *Wade*, 70 Ala. 501; *Matter of Estate of Garcelon*, 104 Cal. 570, 38 Pac. 414. Others, on the ground of public policy, to prevent wrongdoers in cases of undue influence or incompetency from dictating such terms as to stifle investigation, have arbitrarily construed all conditions not to apply to contests based on probable cause. *Jackson* v. *Westerfield*, 61 How. Pr. (N. Y.) 399; *Friend's Estate*, 209 Pa. St. 442, 58 Atl. 853. Whether or not this encroachment on freedom of disposition is warranted to its full extent, it would seem, as held in the principal case, to be justifiable in cases of alleged forgery, where the social interest is more obvious. But *cf.* *Moran* v. *Moran*, 144 Ia. 451, 123 N. W. 202.

WITNESSES — COMPETENCY AS TO PARTICULAR MATTERS — COMPETENCY OF HUSBAND AND WIFE TO BASTARDIZE ISSUE. — A husband's petition for annulment of marriage having been granted, the wife filed a cross-petition for the support of a child, conceived before marriage but born thereafter. The husband offered to testify that he was not the father of the child. *Held*, that he is not a competent witness. *Palmer* v. *Palmer*, 82 Atl. 358 (N. J., Ct. Ch.).

Originally, the testimony of husband and wife to non-access for the purpose of bastardizing the wife's issue was admissible, but required corroboration in certain cases. *Parish of St. Andrew* v. *Parish of St. Bride*, 1 Sess. Cas. K. B. 117. See *King* v. *Reading*, Cas. *t.* Hardw. 79, 82. Lord Mansfield altered the rule to one of incompetency. See *Goodright* v. *Moss*, 2 Cowp. 591, 594. In this form it became well established both in England and in America. *King* v. *Sourton*, 5 A. & E. 180; *Egbert* v. *Greenwalt*, 44 Mich. 245, 6 N. W. 654; *Tioga County* v. *South Creek Township*, 75 Pa. St. 433. The recent English cases, however, show some tendency to restore the earlier law. *In re Yearwood's Trusts*, 5 Ch. D. 545. But see *Aylesford Peerage*, 11 App. Cas. 1, 9. Furthermore the rule, if still in existence in England, is restricted to children begotten as well as born after marriage, which qualification does not exist in America. *Poulett Peerage*, [1903] App. Cas. 395; *Rabeke* v. *Baer*, 115 Mich. 328, 73 N. W. 242. In the principal case, the marriage having been annulled, the child would, in any event, be illegitimate at common law. *Plant* v. *Taylor*, 7 H. & N. 211. See *Zule* v. *Zule*, 1 N. J. Eq. 96, 100. A New Jersey statute, however, legitimizes the issue of annulled marriages. LAWS OF N. J. OF 1907, c. 216, § 1, cl. vi. The court is probably correct in holding that the rule, as laid down in America, applies to this situation. The strongest argument in favor of the rule, the unfairness to the child of permitting its parents to deprive it of its legal status seems as applicable here as elsewhere. But the rule itself is anomalous, and the arguments in its support are insufficient. See 3 WIGMORE, EVIDENCE, § 2064.